

P.E.R.C. NO. 2018-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOONACHIE BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-2017-048

SN-2017-049

MOONACHIE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the Board's request for a restraint of binding arbitration of two grievances. One grievance contests the withholding of a teacher's salary increment; the other alleges that the Board violated the parties' negotiated agreement by issuing a letter of reprimand to the teacher without just cause; both grievances contest the imposition of a corrective action plan. Finding that the reasons for the withholding and corrective action plan predominately involve an evaluation of teaching performance, the Commission restrains arbitration regarding these aspects of the grievances. Finding that the letter presents aspects that are both evaluative and disciplinary in nature, the Commission declines to restrain arbitration regarding a specified portion of the letter but grants a restraint as to the balance.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Sciarrillo, Cornell, Merlino,
McKeever & Osborne, LLC, attorneys (Dennis McKeever, on
the brief; Stephen J. Christiano, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Gail
Oxfeld Kanef, on the brief)

DECISION

On June 8, 2017, the Moonachie Board of Education (Board) filed two scope of negotiations petitions seeking a restraint of binding arbitration of grievances filed by the Moonachie Education Association (Association). One grievance contests the withholding of the grievant's (hereinafter also referred to as GR) increment; the other grievance contests the placement of a reprimand letter in the grievant's personnel file. Both grievances contest the imposition of a corrective action plan.

In SN-2017-048, the Board filed a brief, exhibits, and two certifications of the Superintendent of Schools (Superintendent). In SN-2017-049, the Board filed a brief, exhibits, and two

certifications of the Superintendent. In response to both scope petitions, the Association filed a joint brief, exhibits, and the certification of New Jersey Education Association UniServ Representative, Joseph Tondi (Tondi). At the Commission's request, the Board provided the following additional items: a redacted harassment, intimidation or bullying (HIB) investigation report and a redacted Individualized Education Plan (IEP). These facts appear.

The Association represents all certificated teachers and nurses/health instructors employed by the Board excluding the Superintendent of Schools, Business Administrator/Board Secretary, substitute teachers, and non-certified, non-teaching, or per diem employees. The Board and the Association are parties to a collective negotiations agreement (CNA) that was in effect from July 1, 2013 through June 30, 2016. The grievance procedure ends in binding arbitration.

Article IV of the parties' CNA, entitled "Teacher Rights," Section A, provides:

No teacher shall be disciplined, reprimanded, reduced in rank or compensation without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

The grievant is employed by the Board as a tenured teacher. During the 2016-2017 school year, she was assigned to teach science at Robert L. Craig Elementary School.

On December 16, 2016, an HIB incident that occurred on December 15 involving the grievant and one of her students, hereinafter referred to as John Doe (JD), was reported to the Superintendent. According to the HIB report and related witness statements, the grievant became upset with JD for playing with a calculator during class despite being told not to do so and grabbed the device from him. The grievant also yelled at JD, "for the love of god stop just stop that" and that she "had enough of [JD]" and JD began crying. Notably, the grievant attended JD's IEP meeting on December 9 and the IEP contains a statement of modifications for the general education classroom that includes "utiliz[ing] behavioral management techniques, when necessary"; "avoid[ing] ridicule when redirecting [JD]"; and "us[ing] nonverbal redirection whenever possible."

On December 19, 2016, the anti-bullying specialist initiated an HIB investigation. On December 20, the anti-bullying specialist submitted a report to the Superintendent confirming an "act of HIB" and the report was transmitted to the Board. The HIB report contains the following "Summary of Findings":

Based on student witness statements, the alleged incident in science class on 12/15/16 did occur. After review of . . . [the] statement making claims that this has been ongoing, I reviewed [JD's] IEP. His behavior and inability to control his questions has been communicated and documented. [The grievant] attended his annual IEP meeting on 12/9/16, when behavioral modifications were discussed and agreed upon It clearly

states to "Avoid ridicule when redirecting [JD], use nonverbal redirection whenever possible" and "[JD] should be offered choices whenever possible." Neither of these modifications occurred during the interaction, even though agreed to and documented in his IEP. The parent claims that negative verbal redirection has been occurring for the past two years. She stated that [JD] is continually upset about her "yelling at him" in class. She stated that he is embarrassed in front of his peers and was brought to tears while in class.

On January 19, 2017, the Board affirmed the HIB finding. On January 24, the Board informed the grievant of its determination in a letter that provides in pertinent part:

Please be advised that at its meeting of January 19, 2017, the Superintendent of Schools provided the Board of Education with information regarding [an] HIB incident...; the investigation which was conducted following the initial complaint; recommendations regarding whether the District's investigation found evidence of harassment, intimidation or bullying; and any consequences and/or remedial measure related to his matter.

At its meeting of January 19, 2017, the Board of Education voted to affirm the Superintendent's recommendation regarding [the] HIB incident This matter involved you.

Please be advised that the Board of Education voted . . . to substantiate a finding of harassment, intimidation or bullying.

* * *

Please be advised that the Board's decision may be appealed to the Commissioner of Education no later than 90 days after the issuance of the decision.

With respect to a separate incident, the Superintendent sent the grievant a letter on February 24, 2017 that provides:

On February 21, 2017, the Child Study Team Coordinator received a phone call from a parent. After speaking with Ms. Simmons and the parent, I was told that you were using the classroom aide as a 1:1 aide for this student. According to the student's IEP this is not a required behavior accommodation for the disability of this student. Using this strategy, according to . . . witnesses and the student's mother, caused this student emotional distress.

Your behavior management strategy is inconsistent with the agreed upon behavioral strategies in the student's IEP. I stated in my meeting with you, Mr. Keelen and Ms. Kinsella that you are to implement the required behavior technique that is in the IEP. If you continue to use inappropriate behavior strategies for this student, further disciplinary actions will be implemented. This letter will be in your personnel file and you are going to have included in your corrective action plan a segment on implementing strategies stated in IEPs. Immediately, implement the decided upon behavior management strategies in the student's IEP.

On March 21, 2017, the grievant was issued a corrective action plan due to "concerns regarding her effectiveness as a [s]cience [t]eacher . . . [including] struggles with interpersonal communications with students, the use of appropriate techniques in communicating with students, and the implementation of Individual Education Plans." The corrective action plan provides:

Performance Goals	Strategies, Activities, & Timetable	Support Structures	Data Collection Method & Sources	Responsible Parties	Acceptable Evidence of Progress
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<p>1. Review and Implementation of effective strategies related to the implementation of Individual Education Plans (IEPs)</p>	<p>-By 3/29/17, the District will provide GR with three articles regarding reasons for IEPs.</p> <p>-By 5/2/17, GR shall observe five teachers who are effectively implementing IEPs. She will debrief with each teacher and a supervisor on each observation.</p> <p>-By 4/11/17, GR will meet with the caseworkers of all students with IEPs and read all IEPs within ten days.</p> <p>-By 5/2/17, GR will attend a PD course on implementing students IEPs.</p> <p>-By 4/12/17, GR will display lesson modifications with respect to IEPs on her lesson plans.</p>	<p>-JK/JP shall provide GR with three articles on why students receive IEPs.</p> <p>-JK/JP shall assign GR and provide coverage for observing five teachers effectively implementing IEPs.</p> <p>-JK/JP will observe GR implementing accommodations for students IEPs.</p> <p>-JK will monitor GR's lesson plans for stated modifications.</p> <p>-JK/JP will provide a PD course for GR.</p>	<p>-By 6/1/17, GR shall submit to JP the following documents:</p> <ol style="list-style-type: none"> 1. A reflection paper on the reasons for IEPs 2. A conference summary memo reviewing the meeting with JK after observing the five teachers utilizing accommodations 3. Weekly walk-throughs of GR's lessons to assure implementation of accommodations 4. A certificate of completion from the PD course 	<p>-GR -JK -JP</p>	<p>-GR's reflection paper and conference summary memo must demonstrate that they were:</p> <p>-Submitted in accordance with the deadlines specified herein</p> <p>-Weekly reviews of lesson plans and the implementation of accommodations</p> <p>-A summary shall provide proof of completion of the meetings. GR shall submit reflection (1-2 pages) paper based on information learned from the program.</p>
<p>2. Review and Implement strategies for effective interpersonal communication with students.</p>	<p>-By 5/10/17, the district will provide GR with four articles on the effectiveness of positive communication with students.</p> <p>-By 5/30/17, GR will meet with four teachers who use positive and supportive verbal communication with students.</p>	<p>-JK/JP will provide GR with 4 articles.</p> <p>-JK/JP will assign coverage for GR so she can meet with and learn from teachers who exhibit a positive and supportive communication style with students.</p> <p>-JK/JP will provide coaching for GR on a weekly basis.</p>	<p>-By 6/1/17, GR shall submit the following documents to Mrs. Tozzini:</p> <ol style="list-style-type: none"> 1. GR shall write a reflection on the articles. 2. GR shall write a summary of the meeting. <p>-Weekly walk-throughs of GR lessons to review and provide timely feedback, so that GR can refine her positive and supportive communication with students.</p>	<p>-GR -JK -JP</p>	<p>-GR's journal entries and conference summary memo must demonstrate that they were:</p> <ol style="list-style-type: none"> 1. Submitted in accordance with the deadlines specified 2. Weekly walk-throughs of GR's lessons to review and provide timely feedback, so that GR can refine her positive and supportive communication with students
<p>3. Review and Implement effective strategies for communication with staff and parents</p>	<p>-By 5/30/17, the district will provide GR with four articles on the effectiveness of positive communication with staff and parents.</p> <p>-By 6/12/17, GR will meet with four teachers who use positive and supportive verbal communication with staff and parents.</p>	<p>-JK/JP will provide GR with four articles.</p> <p>-JK/JP will assign coverage for GR, so she can meet with and learn from teachers who exhibit a positive and supportive communication with staff and parents.</p>	<p>-By 6/15/17, GR shall submit the following documents:</p> <ol style="list-style-type: none"> 1. GR shall write a reflection on articles. 2. GR shall write a summary of teacher meetings. 	<p>-GR -JK -JP</p>	<p>-GR's reflection paper and conference summary:</p> <p>-submitted in accordance with the deadlines specified herein.</p>

4. Monthly Evaluations of Progress	-Beginning in March 2017, GR shall attend monthly meetings with JK or JP and a MEA Representative. During the monthly meetings, GR will be provided with an ongoing assessment of her progress under the CAP. Meetings will be held each month beginning in March 2017 and run through June 2017. These meetings shall be communicated in advance by JP on a mutually convenient basis.	-During each monthly meeting, the District shall review GR's progress since the prior monthly meeting and provide GR with feedback on her progress toward the implementation of her CAP. -A summary of each meeting will be prepared by school district.	-Monthly progress meetings -Written monthly meeting summaries	-GR -AS -JP	-Monthly meetings and subsequent reports must demonstrate a "rising action" of consistent growth and improvement on the part of GR and evidence by GR's classroom performance as a Science teacher.
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On June 27, 2017, the Board voted to withhold the grievant's increment for the 2017-2018 school year. On June 30, the Board informed the grievant of its determination in a letter that provides in pertinent part:

The Moonachie Board of Education passed the following resolution on June 27, 2017:

Be it Resolved that the Board of Education, upon the recommendation of the Superintendent, withholds the employment increment, adjustment increment, column adjustment for additional graduate credits, longevity payment, if any, and any other salary adjustment of [the grievant] in accordance with N.J.S.A. 18A:29-14 for the 2017-2018 school year. [The grievant] shall earn the same annual salary for 2017-2018 as was earned in 2016-2017.

* * *

The increments were withheld because of the Board's finding of January 19, 2017 that you committed an act of harassment, intimidation and bullying (HIB) involving a student with disabilities.

On January 25, 2017, the Association filed a grievance claiming that the Board violated Article IV-A of the parties' CNA

by disciplining the grievant without just cause. The grievance noted that on January 11, 2017, "the Board . . . affirmed action against [the grievant] regarding an HIB violation, including a withholding of her increment." The grievance requested that the Board restore the grievant's increment and "remove any corrective action plan and . . . strike any findings of liability of [the] HIB investigation from [the grievant's] personnel file" The Board denied the grievance at each step of the process. On April 12, the Association filed a Demand for Arbitration with the American Arbitration Association (AAA) (Case No. 01-17-0002-2159). On April 27, the Association withdrew its demand for arbitration. On May 26, the Association reinstated its demand for arbitration. On June 8, SN-2017-048 was filed. On June 12, the grievant filed an appeal with the Commissioner of Education regarding the Board's HIB finding. Thereafter, the Board moved to dismiss the appeal as untimely.

On March 7, 2017, the Association filed another grievance claiming that the Board violated Article IV-A of the parties' CNA by disciplining the grievant without just cause. The grievance noted that on February 24, 2017, "the Administration levied disciplinary action against [the grievant] regarding . . . a perceived failure to implement a student's IEP, including a letter of reprimand in her personnel file and measures to be added to a corrective action plan." The grievance requested that

the Board "remov[e] . . . any corrective action plan in relation to [the grievant] and . . . strik[e] . . . any letters of reprimand from [the grievant's] personnel file" The Board denied the grievance at each step of the process. On April 12, the Association filed a Demand for Arbitration with the AAA (Case No. 01-17-0002-2162). Subsequently, the Association withdrew its demand for arbitration. On May 26, the Association filed a Request for Submission of a Panel of Arbitrators (AR-2017-572) with the Commission. On June 8, SN-2017-049 was filed.

The Board argues that the grievant is foreclosed from challenging the increment withholding in binding arbitration because she failed to file a timely appeal regarding the HIB finding - upon which the increment withholding was predicated - with the Commissioner of Education pursuant to N.J.S.A. 18A:37-15(b) (6) (e).^{1/} The Board maintains that the grievant's

1/ N.J.S.A. 18A:37-15 provides in pertinent part:

b. A school district shall have local control over the content of the [HIB] policy, except that the policy shall contain, at a minimum, the following components:

* * *

(6) a procedure for prompt investigation of reports of violations and complaints, which procedure shall at a minimum provide that:

* * *

(e) at the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. The board's

(continued...)

corrective action plan was created to provide guidance for improving teaching performance (i.e., the grievant's failure to implement a student's IEP) and was evaluative, not disciplinary, in nature. The Board also contends that the February 24 letter "is predominately, if not exclusively, evaluative," "bears directly on [the grievant's] teaching performance and does not impose on her any disciplinary or punitive action."

The Association argues that the increment withholding and corrective action plan must proceed to arbitration because the Board "has only provided a document evidencing that it 'found' that [the grievant] committed an act of HIB" but "[n]othing . . . indicates that the HIB matter had anything to do with teaching performance." The Association maintains that the Board has not cited any authority demonstrating that an appeal filed with the Commissioner of Education regarding an HIB finding precludes binding arbitration regarding an increment withholding. The Association also contends that the February 24 letter must proceed to arbitration because it "refers to [the grievant's] use of a classroom aide and in no way implicates [the grievant's] actions in teaching students."

1/ (...continued)

decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than 90 days after the issuance of the board's decision

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

As such, we do not consider the contractual merits of the grievance or whether there was just cause for the withholding.

Disputes involving the withholding of an employee's increment for predominately disciplinary reasons are subject to binding arbitration. N.J.S.A. 34:13A-26 to -29. Conversely, if the reason for a withholding is related predominately to the evaluation of teaching performance, any appeal may only be filed with the Commissioner of Education. N.J.S.A. 34:13A-27d.

If there is a dispute over whether the reason for a withholding is predominately disciplinary, as defined by N.J.S.A. 34:13A-22, or related predominately to the evaluation of teaching performance, we must make that determination. N.J.S.A. 34:13A-27a. Where a board cites multiple reasons, but shows that it acted primarily for certain reasons, we will weigh those concerns more heavily in our analysis. Woodbridge Tp. Bd. of Ed.,

P.E.R.C. No. 2009-53, 35 NJPER 78 (¶31 2009). We are not persuaded in our increment withholding gatekeeping function by the labels given to the documents (e.g., "reprimand" or "evaluation") underpinning a school board's decision. Rather, as all increment withholdings have been deemed inherently disciplinary, we are concerned with whether the cited deficiencies are based on an evaluation of teaching performance. Edison Tp. Bd. of Ed. and Edison Tp. Principals and Supervisors Ass'n, P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996), aff'd 304 N.J. Super. 459 (App. Div. 1997). However, our power is limited to determining the appropriate forum for resolving a withholding dispute; we do not and cannot consider whether there was just cause for a withholding. Montgomery Tp. Bd. of Ed., P.E.R.C. No. 2015-73, 41 NJPER 493 (¶152 2015).

We articulated the process for making an increment withholding determination in Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991):

The fact that an increment withholding is disciplinary does not guarantee arbitral review. Nor does the fact that a teacher's action may affect students automatically preclude arbitral review. Most everything a teacher does has some effect, direct or indirect, on students. But according to the Sponsor's Statement and the Assembly Labor Committee's Statement to the amendments, only the withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education. As in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824

(¶17316 1986), aff'd NJPER Supp.2d 183 (¶161 App. Div. 1987), we will review the facts of each case. We will then balance the competing factors and determine if the withholding predominately involves an evaluation of teaching performance. If not, then the disciplinary aspects of the withholding predominate and we will not restrain binding arbitration.

We find that the reasons for the increment withholding, as set forth in the Board's letters dated January 24 and June 30, 2017, predominately relate to an evaluation of the grievant's teaching performance. "[W]here a withholding flows from a board's subjective educational judgment about what type of interaction should take place in a classroom, it is predominately related to an evaluation of teaching performance." Middlesex Bd. of Ed., P.E.R.C. No. 2005-80, 31 NJPER 177 (¶72 2005) (citing Franklin Tp. Bd. of Ed., P.E.R.C. No. 2001-64, 27 NJPER 389 (¶32144 2001)); accord Roxbury Tp. Bd. of Ed., P.E.R.C. No. 94-80, 20 NJPER 78 (¶25034 1994) (granting a restraint of binding arbitration where, although the board "ha[d] not relied on observation reports or an annual performance report," "the cited reasons for the withholding center[ed] on [the board's] subjective educational judgment concerning an allegation of an inappropriate interaction with students"); Farmingdale Bd. of Ed., P.E.R.C. No. 2015-28, 41 NJPER 224 (¶74 2014) (granting a restraint of binding arbitration where the "[b]oard's evaluation of the grievant's teaching performance . . . [was] initiated

through a parental complaint and subsequent investigation occurring outside of the formal evaluation process”).

Specifically, the January 24 and June 30 letters focus on the grievant’s alleged failure to appropriately implement an IEP as indicated in the HIB investigation report. The Commission has restrained arbitration in cases involving an alleged failure to appropriately implement IEPs, unilaterally altering IEPs, and making inappropriate comments to a student during an IEP conference. *See, e.g., Willingboro Bd. of Ed.*, P.E.R.C. No. 96-28, 21 NJPER 388 (¶26239 1995); *Middlesex Bd. of Ed.*, P.E.R.C. No. 2005-80, 31 NJPER 177 (¶72 2005); *Montgomery Tp. Bd. of Ed.*, P.E.R.C. No. 2010-59, 36 NJPER 44 (¶20 2010).

Turning to the corrective action plan and the Board’s letter dated February 24, 2017, the New Jersey Supreme Court has held that a school board has a managerial prerogative to observe and evaluate employees. *Bethlehem Twp. Ed. Ass’n v. Bethlehem Twp. Bd. of Ed.*, 91 N.J. 38 (1982). Disciplinary reprimands, however, may be contested through binding arbitration. N.J.S.A. 34:13A-29; N.J.S.A. 34:13A-5.3. In *Holland Tp. Bd. of Ed.*, P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff’d NJPER Supp.2d 183 (¶161 App. Div. 1987), the Commission distinguished between evaluations of teaching performance and disciplinary reprimands:

We realize that there may not always be a precise demarcation between that which

predominantly involves a reprimand and is therefore disciplinary within the amendments to N.J.S.A. 34:13A-5.3 and that which pertains to the Board's managerial prerogative to observe and evaluate teachers and is therefore nonnegotiable. We cannot be blind to the reality that a "reprimand" may involve combinations of an evaluation of teaching performance and a disciplinary sanction; and we recognize that under the circumstances of a particular case what appears on its face to be a reprimand may predominantly be an evaluation and vice-versa. Our task is to give meaning to both legitimate interests. Where there is a dispute we will review the facts of each case to determine, on balance, whether a disciplinary reprimand is at issue or whether the case merely involves an evaluation, observation or other benign form of constructive criticism intended to improve teaching performance. While we will not be bound by the label placed on the action taken, the context is relevant. Therefore, we will presume the substantive comments of an evaluation relating to teaching performance are not disciplinary, but that statements or actions which are not designed to enhance teaching performance are disciplinary.

With respect to the corrective action plan, we find that the reasons for the increment withholding and the February 24 letter (i.e., the grievant's failure to appropriately implement IEPs) also form the basis for the corrective action plan. Whether or not the Association filed a timely appeal regarding the HIB finding with the Commissioner of Education and whether or not the February 24 letter is a disciplinary reprimand does not change

the nature of the Board's underlying concerns or its right to address those concerns with an improvement plan. See Clinton Tp. Bd. of Ed., P.E.R.C. No. 2017-35, 43 NJPER 239 (¶74 2016).

With respect to the February 24 letter, we find that it presents aspects that are both evaluative and disciplinary in nature. The letter does not refer to itself as a disciplinary reprimand. The first paragraph mentions a report that the grievant was allegedly "using a classroom aide as 1:1 aide for [a] student" and specifies that "this is not a required behavior accommodation" according to the student's IEP and caused the student "emotional distress." Similarly, the second paragraph indicates that the grievant's strategy is in fact "inconsistent with the agreed upon behavioral strategies within the student's IEP" and reiterates that the grievant has been advised "to implement the required behavior technique that is in the IEP." Moreover, this paragraph advises that "a segment on implementing strategies stated in IEPs" will be included in the grievant's corrective action plan and directs the grievant to "[i]mmediately . . . implement the decided upon . . . strategies in the student's IEP." As with the increment withholding and corrective action plan, we understand these aspects of the letter to be an evaluation of the grievant's teaching performance that communicates the Board's concerns regarding the grievant's failure to appropriately implement an IEP and provides guidance

in order for the grievant to address those concerns. See, e.g., Lincoln Park Bd. of Ed., P.E.R.C. No. 87-45, 12 NJPER 829 (¶17318 1986) (granting a restraint of binding arbitration regarding a "professional improvement plan" and a related memorandum that was placed in the teacher's personnel file based, in part, upon the fact that the memorandum "was simply a follow-up to the professional improvement plan which emphasized how strongly the superintendent felt about the need for [the teacher] to change her techniques for disciplining students"); see also, Willingboro Bd. of Ed.; Middlesex Bd. of Ed.; Montgomery Tp. Bd. of Ed.; Clinton Tp. Bd. of Ed.

However, the second paragraph also explicitly threatens "further disciplinary actions" if the grievant continues to use "inappropriate behavior strategies" and indicates that the letter "will be [placed] in [the grievant's] personnel file." These aspects of the February 24 letter are consistent with the hallmarks of a disciplinary reprimand, particularly given that the Board has not submitted a certification from the Superintendent explaining his reference to "further disciplinary actions." The Commission has found that threatening "further disciplinary action" suggests a "memorializ[ation] [of] conduct [that] the administration already deemed to warrant discipline." Stafford Tp. Bd. of Ed., P.E.R.C. No. 2017-54, 43 NJPER 371 (¶105 2017) (denying a restraint of binding arbitration regarding

letters issued to teaching staff members outside the formal evaluation process that criticized their actions at a professional event); cf. Franklin Tp., P.E.R.C. No. 94-96, 20 NJPER 193 (¶25090 1994) (granting a restraint of binding arbitration regarding a revised letter issued to a police officer that analyzed his driving record based, in part, upon the removal of a threat of "further disciplinary action").

Accordingly, we find that a balanced approach requires us to permit these portions of the February 24 letter to proceed to binding arbitration. Permitting an arbitrator to excise these references from the letter, if determined to have been issued without just cause, will not interfere with the Board's ability to evaluate or provide feedback regarding the grievant's performance. However, the arbitrator may not reconsider other portions of the February 24 letter or prevent the Board from communicating its findings and concerns to the grievant. See, e.g., Elizabeth Bd. of Ed., P.E.R.C. No. 2016-74, 42 NJPER 542 (¶149 2016) (granting in part, and denying in part, a restraint of binding arbitration where the subject letter contained aspects of teacher evaluation as well as disciplinary sanctions).

ORDER

The request of the Moonachie Board of Education for a restraint of binding arbitration is:

- (a) granted with respect to the increment withholding;

(b) granted with respect to the corrective action plan;
and

(c) denied with respect to the following portion of the
February 24, 2017 letter but granted as to the balance
of the document:

If you continue to use inappropriate behavior strategies for this student, further disciplinary actions will be implemented.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Jones and Voos voted in favor of this decision. None opposed. Commissioners Bonanni and Eskilson were not present.

ISSUED: November 30, 2017

Trenton, New Jersey